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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,866	12/10/2003	Kyle Brandon Jones	3009DD-60547	8318

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3781

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/732,866

Applicant(s)

JONES, KYLE BRANDON

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27 is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1-6 have been canceled. Claims 7-27 are pending.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Effertz.

Effertz discloses an apparatus for insulating a beverage container comprising a first portion (rectangular strip 5) defining a cavity when it is bent to enclose the sidewall of a beverage container as shown in Fig. 1, the apparatus includes a means for urging a first edge and second edge towards one another defined by Velcro strips 11 and 12.

Claims 7, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Henderson.

Henderson discloses an apparatus for insulating a beverage container comprising a first portion (sheet 22) defining a cavity when it is bent to enclose the sidewall and bottom of a beverage container as shown in Fig. 1-4, the apparatus includes a means for urging a first edge and second edge towards one another defined by seam tape 27.

Claims 7, 8, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Waggoner.

Waggoner discloses an apparatus capable of insulating a beverage container comprising a first portion and a second portion, the first portion (sheet member 6) defining a cavity when rolled, the first portion having first and second axially extending edges aligned with the longitudinal axis of the sheet. The first portion includes a means for urging the edges toward one

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another as cord 12 and openings 10. The second portion (disk 13 and tongue 15) is located at a base end of the sheet 6, the second portion defining a base (disk 13) and a tongue (tongue 15), the tongue is disposed within the cavity of the first portion adjacent the first and second edges of the first portion.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-12, 20 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waggoner in view of Rankin, Sr. (Rankin).

Re claim 9, Waggoner discloses the invention except for the connection between first and second portions being detachable or removable. Rankin teaches an insulating cover for a keg with a first sidewall-enclosing portion and a second base portion with a removable connection of tabs 38 and corresponding male and female snaps. It would have been obvious to substitute the connection of Rankin in place of Waggoner's permanent connection to provide easier storage of knockdown components and easier assembly such that heavy beverage containers (kegs) can be more easily placed on a base first before the sidewalls are connected rather than lifting the heavy container over a top open end of a device with the base connected to erect sidewalls.

Re claim 20, the tongue is an extension of the strip and these two elements are one piece. Therefore, the tongue 15 of Waggoner is considered to have two portions connected as one piece, a strip proximal to the base and a tongue distal from the base.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waggoner in view of Rankin as applied to claim 12 above, and further in view of Bergman et al. (Bergman).

The combination discloses the invention except for the slot in the sidewall. Bergman teaches a slot in the sidewall (see Fig. 8). It would have been obvious to modify the sidewall to have a slot to provide passage for a flexible tab allowing easier assembly and proper alignment of parts.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waggoner in view of Allen et al. (Allen).

Waggoner discloses the invention except for the pull tab. Allen teaches a pull tab on the distal end of a tongue. It would have been obvious to add the pull tab to enhance the grip on the tongue.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waggoner in view of Duncan et al. (Duncan).

Waggoner discloses the invention except for the eyelets. Duncan teaches eyelets. It would have been obvious to add the eyelets to reinforce the cord openings of Waggoner to prevent the sheet material from tearing.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waggoner in view of Duncan as applied to claim 15 above, and further in view of Liu.

Re claim 16, the combination discloses the invention except for the pull clamp. Liu teaches a pull clamp 20. It would have been obvious to add a pull clamp to tighten the cord so that the cord doesn't become loose and cause the beverage to fall or move within the cover.

Re claim 17, Official notice is taken of elastic cord being well known. It would have been obvious to modify the cord to be elastic to provide the additional closing force of elasticity further holding the cover closed even when tied or clamped.

Claims 21, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waggoner in view of Rankin as applied to claim 20 above, and further in view of Duncan, Liu and Allen.

Re claims 21 and 22, the combination discloses the invention except for the eyelets. Duncan teaches eyelets. It would have been obvious to add the eyelets to reinforce the cord openings of Waggoner to prevent the sheet material from tearing.

Re claim 22, the combination discloses the invention except for the pull clamp. Liu teaches a pull clamp 20. It would have been obvious to add a pull clamp to tighten the cord so that the cord doesn't become loose and cause the beverage to fall or move within the cover.

Re claim 23, the combination discloses the invention except for the pull tab. Allen teaches a pull tab on the distal end of a tongue. It would have been obvious to add the pull tab to enhance the grip on the tongue.

Claim 27 is allowed.

Applicant's arguments filed September 14, 2006 have been fully considered but they are not persuasive. Re applicant's argument that the Velcro of Effertz is not a sufficient means for urging the first and second edges toward one another, this argument is not persuasive. When the VELCRO strips 11 and 12 are engaged, any force which tends to move the first and second edges away from each other are resisted due to the holding strength of the VELCRO. Therefore, the VELCRO strips are responsible for a force which holds the first and second edges together.

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This force urges the first and second edges toward one another when the resiliency of the sheet material 5 tends to flatten the sheet 5 or when slight forces pull the outer edge away from the inner edge, stronger pulling forces are used to disengage the Velcro adhesion to return the sheet to a flat condition for storage. Re applicant's argument that the seam tape of Henderson is not a sufficient means for urging the first and second edges toward one another, this argument is not persuasive for similar reason as in Effertz that the seam tape develops a fastening force that is stronger than the force developed by the Velcro of Effertz. The fastening force of Henderson's seam tape urges the first and second edges toward one another.

Re applicant's argument that Waggoner is not analogous art. Waggoner is capable of insulating and capable of enclosing a beverage container. The primary purpose of Waggoner is to hold a rolled sheet of linoleum. Although the stated purpose of Waggoner is completely different than for holding a beverage container, Waggoner's capacity to insulate beverage containers can't be ignored. Re the insulating capability of sheet 6, the specific material of the sheet is not disclosed. The sheet is flexible and is bent to surround the roll of linoleum. The sheet doesn't appear to be perforated. Even though the material is unknown, the sheet forms a barrier to thermal radiation and performs the insulating function claimed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on M-Th 6:30-5.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc